IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2548 OF 2006

Hanif Fakir Mohammad Shaikh & ors. ... Petitioners

V/s

Bhaktiyar Hayatmiya Choudhary & ors. ... Respondents

Mr. N.K. Iyer for the petitioners.

Mr. P.K. Hushing for respondent Nos. 1 to 3.

CORAM: P.V. KAKADE, J.

DATED: 25TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner defendants have filed this petition against the judgment and order passed by the Addl. District Judge, Pune, dated 31.1.2006 dismissing the appeal and confirming the judgment and order passed by the Trial Court dated 20.8.2005 decreeing the suit against defendant Nos. 2 and 3 only who are the present petitioners.

3. It appears from the record that both the Courts below have recorded concurrent findings to the effect that the plaintiffs have proved that they require the suit premises reasonably and bonafide and for their own use and occupation. It was further held that greater hardship would be caused to the plaintiffs if the decree is refused to be passed than the defendants if the decree is passed.

At this juincture, I may point out that the learned counsel for the petitioners did not address this Court on the concurrent findings recorded by the Court below on the issue regarding Sec. 13(1)(g) of the Bombay Rent Act. However, the learned counsel for the petitioners submitted that it was held by the Trial Court that defendant No.1 was held not to be a tenant in the suit premises but only defendant Nos. 2 and 3 were held to be the tenants and on this basis it was submitted that when the defendant No.1 was held not to be tenant, the status of defendant Nos. 2 and 3 would not be determined by recording finding on that aspect. It was further submitted that this aspect is not at all addressed to by the lower appellate Court and, therefore, the Trial Court finding has attained the finality and, as such, the judgment of the Courts below

are rendered bad in law.

4. In this regard perusal of the judgment of the Trial Court is clear enough to show that plaintiffs did not produce any evidence on record to show that defendant No.1 was son of one Smt. Khatoonbi Shaikh, whereas defendant Nos. 2 and 3 were proved to be the children of said Smt. Khatoonbi Shaikh and finding was recorded on the basis of the factual evidence that it was held that defendant Nos. 2 and 3 had acquired tenancy rights from Smt. Khatoonbi Shaikh. Once this position is clear, the submissions advanced on behalf of the petitioners is devoid of any merits.

5. On perusal of the judgments of both the Courts below, it is found that the issue regarding bonafide requirement of the plaintiffs and consequential issue of greater hardship are seen to be adjudicated in proper perspective and, therefore, it would brook no interference by virtue of Art. 227 of the Constitution of India.

6. In the result, the petition stands dismissed with no order as to costs.

7. At this stage, the learned counsel for the petitioners submitted that some time should be granted to evict the premises. In view of the facts and circumstances, the decree for execution shall not be executed for the period of six months from the date of this order on condition that the petitioners and all adult members of the family shall execute the undertaking to that effect and shall not create any third party interest in the suit property and shall continue to pay the rent during the period of occupancy. The undertaking to be furnished within two weeks from the date of this order. In case the petitioners failed to furnish the undertaking, the respondents plaintiffs shall be entitled to execute the decree immediately.

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